IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1743 OF 2007

The Foreshore Co-operative
Housing Society Ltd. ....Petitioner
V/s.
The Divisional Jt.Registrar
C.S. Mumbai & Ors. ....Respondents

Mr.N.N. Bhadrashete for the Petitioner.

Ms.P.S. Cardozo, AGP for Respondent Nos.1 and 2.

Mr.D.H. Mehta i/b M/s.Vinod Sampat for Respondent No.3.

CORAM : S.J. VAZIFDAR, J.
DATED : 25TH JULY, 2007.

P.C. :

1. The impugned order warrants no interference. Even the technical grounds on which the Petitioner society had refused to admit Respondent No.3 as a member of the society are not well founded. Further to refuse the membership in the facts and circumstances of this case would be grossly unfair.

2. Respondent No.3 has been residing in the said flat since 1972. There were disputes between Respondent No.3 and the original owner. Respondent No.3 had claimed tenancy. The litigation was

ultimately settled by Respondent No.3 having agreed to purchase the said flat on 9.10.2002.

3. Thereafter pursuant to the agreement to purchase, Respondent No.3 made an application to the Petitioner for being admitted as a member on 26.10.2002. There was no response from the Petitioner. Reminders were sent by Respondent No.3 on 31.1.2003, 22.4.2003 and 16.9.2003. There was no response to Respondent No.3's reminders. Respondent No.3 finally requested the Petitioner to inform him if there was any objection, so that the same could be attended to.

4. As there was no response from the Petitioner and as the Petitioner did not admit Respondent No.3 as a member, an application was made by Respondent No.3 under Section 22 of the Maharashtra Co-operative Societies Act, 1960 on 7.11.2003. The said application was allowed. The Petitioner challenged the order by filing a Revision Application under Section 154 of the said Act. By the impugned order, the Revision Application was dismissed.

5. One of the contentions raised is that there was illegal construction in the said flat. There is a

finding of fact that there was no evidence to establish the allegations. It is also observed that no complaints have been made to the Municipal Council against any allegedly illegal construction. It is also noted that this aspect was not even brought to the notice of Respondent No.3 at any stage. In the circumstances, I am not inclined to interfere with this finding.

6. The next contention is that no notice as required under Rule 24(1)(b) of the said Act was issued. Rule 24(1)(b) requires 15 days time to be given without which no transfer of shares would be effected, which was given. This was not even a ground for not admitting Respondent No.3 as a member. Had Respondent No.3 been informed of the same, this technical defect, if any, could have been rectified. I do not see any justification to exercise jurisdiction under Article 227 of the Constitution of India to interfere on this ground.

7. It was then submitted that Respondent No.3 was not entitled to be a member in view of the notification under Section 22 of the said Act dated 17.7.1963 and in particular clause 6 thereof. Clause 6 provides certain conditions to be fulfilled in the

case of the housing society intending to construct or having constructed a multi story building/buildings. This point was not raised before the trial Court. It is also important to note that before the Revisional Authority, the society did not even specify the law or rule which entitled the Petitioner to withhold the transfer on the alleged ground.

8. Prima-facie, there is no evidence to establish the applicability of the proviso to clause 6 of the notification. There is nothing to suggest that the building was constructed or that the society intended constructing the same. Indeed the evidence is to the contrary as a building has been in existence for more than 30 years. Thus, prima-facie atleast the notification does not even apply to the present society.

9. The transfer has now been effected on 28.1.2007.

10. In the circumstances, the Writ Petition is dismissed.